

STATE OF TENNESSEE

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Opinion No. 00-031

Ability of Persons to Carry Firearms on Premises that Sells Beer Which Contain Five Percent Alcohol or Less

QUESTION

Does Tenn. Code Ann. § 39-17-1305(a) prohibit carrying of a gun into an establishment that sells beer with less than a 5% alcohol content?

OPINION

No. A court would most likely interpret the term “alcoholic beverages” in Tenn. Code Ann. § 39-17-1305(a) to exclude beer, thereby permitting the carrying of a weapon into an establishment that sells beer with an alcohol content of 5% by weight or less.

ANALYSIS

In 1989 the legislature changed the scope of the prohibition against carrying firearms on premises where beverages containing alcohol are sold or served. The current version provides:

It is an offense for a person to possess a firearm on the premises of a place open to the public where *alcoholic beverages* are served or in the confines of a building where *alcoholic beverages* are sold.

Tenn. Code Ann. § 39-17-1305(a)(emphasis supplied). The prior version provided:

No person shall intentionally, knowingly, or recklessly carry on or about his person while inside the confines of the building of any establishment licensed to sell *beer, wine or any other alcoholic beverage*, for consumption on or off premises, any weapon prohibited by § 39-6-1701 for the purpose of going armed.

Tenn. Code Ann. § 39-6-1717 (1988)(emphasis supplied).

When interpreting the meaning of a statute, a court cannot dismiss a change in wording which the legislature has chosen to make to the statutory provisions. *State v. Horton*, 880 S.W.2d 732, 736 (Ct. Crim. App. 1994). The court must presume that there was a purpose for the legislative decision to change the provisions of the prohibition from applying to an “establishment licensed to sell beer, wine or any other alcoholic beverage, for consumption on or off premises” to “premises of a place

open to the public where alcoholic beverages are served or in the confines of a building where alcoholic beverages are sold.”

The legislature did not provide a separate definition for alcoholic beverages in Title 39. Courts have previously found that the terms “alcoholic beverages” and “beer” are not synonymous under the law. *Underground II, Inc. v. City of Knoxville*, No. 03A01-9709-CH-00425, 1998 LEXIS 78, p. 2 (Tenn. Ct. App. February 4, 1998).¹ “Alcoholic beverages” are specifically defined in Tenn. Code Ann. § 57-3-101(a)(1) to exclude patented medicine or beer with an alcoholic content of five percent (5%) weight or less. These distinctions between “alcoholic beverages” and “beer” existed in 1989. When the legislature chose to reword the provisions of Tenn. Code Ann. § 39-17-1305(a), the legislature removed the word “beer” from the statute, and did not provide a separate definition of the term “alcoholic beverages” for the specific purposes of Title 39. Therefore, a court would most likely interpret the term “alcoholic beverages” in Tenn. Code Ann. § 39-17-1305(a) to conform to the definition provided in Tenn. Code Ann. § 57-3-101(a)(1). Thus the prohibition against carrying a weapon where alcoholic beverages are sold would not apply to establishments which sell or serve no intoxicating beverages other than beer with an alcohol content of 5% by weight or less.

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¹Further, Tenn. Code Ann. §57-4-203(k) provides that persons licensed to sell wine or liquor must display a sign specifying that it is illegal to carry weapons where alcoholic beverages are sold or served. Tenn. Code Ann. §§57-5-105 and 57-5-301, which deal with the regulation of beer containing an alcoholic content of five percent (5%) or less, do not have similar provisions dealing with the posting of a sign prohibiting the carrying of weapons. The presence of words of limitation in one part of a statute and the absence of those words in other parts of the same statute indicates an intentional legislative choice. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). The legislature has clearly provided that in licensing of establishments which sell “alcoholic beverages” warnings concerning the possession of weapons on the premises are required. However the legislature has not required a similar provision for the licensing of establishments that local beer boards choose to license. The parts of a statute should be construed so that its component parts are consistent. *Cohen v. Cohen*, 937 S.W.2d 823, 827 (Tenn. 1996).

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